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**UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513**

Zervas

Mailed: January 21, 2003

Cancellation No. 24,108

Galleon S.A., Bacardi-  
Martini U.S.A., Inc., and  
Bacardi & Company Limited

v.

Havana Club Holding,  
S.A., dba HCH, S.A., and  
Empresa Cubana Exportador  
De Alimentos y Productos  
Varios, S.A., dba  
Cubaexport, joined as a  
defendant<sup>1</sup>

**Before Sams, Cissel, and Walters, Administrative Trademark  
Judges.**

**By the Board.**

Although this proceeding has been suspended for over  
five years, a number of motions are pending before the  
Board, namely:

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<sup>1</sup> The Board's April 24, 2002 and May 13, 2002 orders, as well as numerous papers filed by the parties, identify Havana Rum & Liquors, S.A. as a party defendant. The Board did not institute proceedings against Havana Rum & Liquors, S.A. and has not joined or substituted Havana Rum & Liquors, S.A. as a party defendant. Therefore, the caption of the Board's April 24, 2002 and May 13, 2002 orders are amended to identify Havana Club Holding, S.A., dba HCH, S.A. as the only party defendant, and the parties are ordered *not* to include Havana Rum & Liquors, S.A. in the case caption in any further papers filed with the Board, unless the Board joins or substitutes Havana Rum & Liquors, S.A. as a party.

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1. Respondents' motion for summary judgment (filed October 18, 1996);
2. Petitioners' motion to extend the time to respond to the motion for summary judgment (filed December 2, 1996);
3. Petitioners' motion under Fed. R. Civ. P. 56(f) (filed January 6, 1997);
4. Petitioners' combined motion to resume proceedings, to substitute parties and for summary judgment (filed March 15, 2002);
5. Petitioners' motion to resume proceedings (filed August 21, 2002);
6. Respondents' "Motion Pursuant to the Government in the Sunshine Act for (A) an Order Requiring Petitioners to Show Cause Why Their Claims Should Not be Dismissed Due to Improper Ex Parte Contacts Concerning an Adjudicatory Proceeding, (B) Full Disclosure by Petitioners, Governor Bush, USPTO Director James E. Rogan and Deputy Directory Jon Dudas of the Extent and Nature of All Such Ex Parte Communications Related to This Proceeding, and (C) Suspension of This Proceeding Pending Resolution of the Foregoing" (filed September 10, 2002);<sup>2</sup> and

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<sup>2</sup> Respondents' reply (filed October 1, 2002) regarding their motion under the Government in the Sunshine Act indicates that "SB" signed the reply for Charles Sims, who is the attorney of record for respondents. It is not clear from the reply whether "SB" is an attorney.

Every paper filed in an inter partes proceeding before the Board must be personally signed by the party filing it, or by the party's attorney or other authorized representative, as appropriate. See Trademark Rule 2.119(e); and Patent and Trademark Office Rules 1.4(d) and 10.18(a). It is not appropriate for one person to sign a paper for another person. See Trademark Rule §2.119(e), and Patent and Trademark Office Rule 10.18(a); and *Cerveceria India Inc. v. Cerveceria Centroamericana, S.A.*, 10 USPQ2d 1064 (TTAB 1989), *aff'd*, *Cerveceria Centroamericana, S.A. v. Cerveceria India Inc.*, 892 F.2d 1021, 13 USPQ2d 1307 (Fed. Cir. 1989).

Because the Board has not received an objection to the reply from petitioners, the Board has considered respondents' reply. Respondents, however, are allowed until **thirty days** from the mailing date of this order to inform the Board whether "SB" is an

7. Petitioners' motion to strike respondents' motion for "purported" order to show cause and for default judgment (filed September 25, 2002).

Before turning to the pending motions, a brief review of the procedural history of this case is in order.

On March 17, 1997, the Board suspended proceedings due to a civil action between the parties in the United States District Court for the Southern District of New York (*Havana Club Holding, S.A., et al. v. Galleon S.A. et al.*, Civil Action No. 96 CIV 9655). The Board also deferred action on respondents' motion for summary judgment, petitioners' motion to extend time and petitioners' motion under Federal Rule 56(f).

Several years later, on March 1, 2001, petitioners "request[ed] that the judgment of the United States District Court ... canceling Havana Club Holding's rights in Registration No. 1,031,651 be given effect." Petitioners noted that "the United States Court of Appeals for the Second Circuit affirmed the judgment of the District Court" and "the Supreme Court of the United States denied Havana Club Holding's petition for writ of certiorari." On July 6, 2001, the Board noted petitioners' request was not in accordance with 15 U.S.C. §1119 which states that "[d]ecrees and orders [regarding cancellation of registrations] shall

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attorney and, if not, to file a copy of their reply signed by an attorney.

be certified by the court to the Director," and maintained the proceedings in suspended status.

On March 15, 2002, petitioners filed their motion to resume proceedings because the civil action "has long since concluded, appeals have been taken, and a final decision on the merits has been entered." They also moved to substitute parties and for summary judgment. About three weeks later, on April 3, 2002, the Board received a request for a telephone conference from respondents, inter alia seeking a denial of petitioners' motion to resume proceedings. The request noted that on October 27, 2001, "the Acting Director of the PTO issued an order directing the parties to the federal litigation [that is, the District Court proceeding] to show cause why the records of the PTO should not be rectified ... to reflect the district court's order invalidating the assignments of the Registration" involved in this proceeding; that on January 15, 2002, "Commissioner Anne H. Chasser issued a formal Notice carefully implementing the District Court's partial Judgment by invalidating the recorded assignments of the Registration from Cubaexport [Cubaexport is the common name for the original registrant, i.e., Empresa Cubana Exportador De Alimentos y Productos Varios, S.A.] to HRL [Havana Rum & Liquors, S.A.] and from HRL to HCH [Havana Club Holding, S.A.]"; and that on March 15, 2002, "Petitioners filed a

Petition for Review with the ... Federal Circuit, appealing from the Commissioner's decision which refused to cancel the Registration." In view thereof, respondents sought continued suspension of the proceeding "[i]n light of the ongoing Federal Circuit appeal which may render this Board proceeding moot ...."

The Board conducted a telephone conference on April 9, 2002, and in its order mailed on May 13, 2002, continued the suspension of proceedings "pending disposition of the matter before the Federal Circuit, including, if so ordered, any proceedings on remand to the PTO." On July 31, 2002, the Federal Circuit dismissed the appeal, finding that the Federal Circuit's jurisdiction regarding review of decisions concerning trademarks is limited. The Federal Circuit was not persuaded by petitioners' arguments that "by issuing the order to show cause, the PTO initiated a cancellation proceeding and, essentially, denied cancellation because the PTO apparently did not rectify its records"; and that petitioners' appeal could be treated as a petition for writ of mandamus. Three weeks later, on August 21, 2002, petitioners filed their second motion to resume proceedings.

In this order, we decide those motions which are appropriate for decision at this time, i.e., petitioners' motion to substitute, respondents' motion under the Government in the Sunshine Act, petitioners' motion to

strike and for default judgment, and respondents' motions to resume.

***Substitution/Joinder of Party***

In its partial judgment of 1997, see *Havana Club Holding S.A. v. Galleon S.A.*, Slip op. (S.D.N.Y., Oct. 20, 1997), the District Court found that Havana Club Holding, S.A. never "obtained any rights to the HAVANA CLUB mark in the United States," and that Havana Club Holding, S.A. has "no rights to the registered trademark HAVANA CLUB for 'rum' in the United States." It also stated that "[a]ny rights that Havana Club Holding, S.A. may have had, may have or claims to have had in the Registration of the HAVANA CLUB trademark (U.S. Reg. No. 1,031,651) from forever until today are hereby canceled." Further, in its opinion dated August 12, 1997, the District Court refused to cancel the involved registration despite the defendants' request for cancellation. The District Court explained that Cubaexport has a "significant business interest in maintaining the registration of its mark"; and "[c]ancelling the registration ... would lead to an inequitable adjudication of the matter and neglect the substantial rights of Cubaexport, a party not before this court." *Havana Club Holding, S.A. v. Galleon, S.A.*, 974 F. Supp 302, 312 (S.D.N.Y. 1997).

In view of the District Court opinion, joinder or substitution of Cubaexport is in order. So as to facilitate

the taking of discovery, we join Cubaexport in this proceeding and deny petitioners' motion for substitution. See TBMP §512 and cases cited therein.

As notice to Cubaexport of our decision to join Cubaexport, a copy of this order is being mailed to the domestic representative identified in the records of the United States Patent and Trademark Office ("USPTO"), i.e., Michael Krinsky of Rabinowitz, Boudin, Standard, Krinsky and Lieberman, P.C.<sup>3</sup> [We note that USPTO records also reflect that Charles Sims of Proskauer Rose, LLP, who now represents Havana Club Holding, S.A., is the correspondence addressee.] Unless Cubaexport directs otherwise, all notices and orders in this proceeding for Cubaexport will be mailed to Mr. Krinsky at Rabinowitz, Boudin, Standard, Krinsky and Lieberman, P.C., 740 Broadway at Astor Place, 5<sup>th</sup> Floor, New York, NY 10003-9518 and all papers to be served on Cubaexport pursuant to Trademark Rules 2.119(a) and (b) should be served on Mr. Krinsky at the above address. See Trademark Rule 2.119(d).

***Respondents' Motion Under the Government in the Sunshine Act; and Petitioners' Motion to Strike Respondents' Motion and Motion for Default Judgment***

Respondents, in their motion, maintain that petitioner Bacardi-Martini U.S.A., Inc. and four of its senior managers

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<sup>3</sup> We also note that Mr. Krinsky represented Havana Club Holding, S.A. earlier in this proceeding.

and their wives made significant monetary contributions to the Florida Republican Party for the past four years, culminating with a \$50,000 contribution on May 29, 2002. On June 13, 2002, shortly after the \$50,000 contribution, Florida (Republican) Governor Jeb Bush wrote a letter to USPTO Director Rogan, stating:

I am writing on behalf of Florida-based Bacardi-Martini, USA, Inc. to ask that the Patent and Trademark Office take quick, decisive action on a pending application to expunge the registration of the trademark Havana Club. The out-dated registration belongs to a company owned by Fidel Castro called CubaExport and should be cancelled immediately.

\* \* \*

Though Bacardi-Martini, USA, Inc. has spent a great deal of time and money to cancel the delinquent registration owned by the Castro regime, there has been no relief for the company. Instead, they have been faced with a process mired in lengthily bureaucratic procedures, with no end in sight.

A swift resolution to this matter is imperative. . . . .

In a response dated July 3, 2002, Director Rogan stated that he is "grateful for the opportunity to provide ... specific information regarding the status of the 'HAVANA CLUB' trademark registration"; provided certain status information about this proceeding; and invited Governor Bush to call him or Jon Dudas, Deputy Under Secretary for Intellectual Property, if Governor Bush had any "further questions on this matter." Governor Bush then followed-up with a second

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letter to Director Rogan dated July 16, 2002, in which Governor Bush thanked Director Rogan for the information he "passed along regarding the Bacardi case"; and stated that "[a]long with the continued assistance of Mr. Jon Dudas, your attention to this matter has been very helpful."

Respondents contend that petitioners' failure to provide a copy of Governor Bush's letters to respondents or their attorneys was in violation of 5 U.S.C. §557(d)(1)(A), which is a subsection of the Administrative Procedure Act enacted pursuant to the Government in the Sunshine Act. See Pub.L.No. 94-409 (1976). Also, they contend (i) that Director Rogan's failure to provide respondents with copies of the June 13 and July 16 letters was in violation of 5 U.S.C. §557(d)(1)(C); (ii) that the failure to provide respondents with the "other and further *ex parte* communications by Bacardi or on its behalf, including all written communications and/or memoranda stating the substance of all oral communications that the July 16 letter indicates have taken place between Deputy Director Dudas and Bacardi and those acting on its behalf" violates 5 U.S.C. §557(d)(1)(C); and (iii) that the "continuing assistance" and unspecified "further *ex parte* communications" by Deputy Director Dudas "and other and further communications that on information and belief have been made by Director Rogan, Deputy Director Dudas, or their agents and employees

concerning this matter to Bacardi and/or those acting on its behalf" violate 5 U.S.C. §557(d)(1)(B).

In view thereof, respondents seek a show cause order under 5 U.S.C. §557(d)(1)(D) why its claim should not be dismissed and seek "an order demanding full disclosure by Bacardi (and its agents and attorneys), Director Rogan, Deputy Director Dudas, the USPTO (including the TTAB), and Governor Bush,<sup>4</sup> or all ex parte communications thus far made related to this proceeding." Respondents maintain that "[o]nly with that information in hand can the appropriate assessments and corrective steps be formulated" due to the alleged ex parte contacts; and that "[w]ithout such information, it is impossible to assess whether Bacardi's conduct has so tainted this proceeding that respondents ... cannot obtain, and reasonably be seen to have obtained, a fair, impartial adjudication of their interests." They also seek continued suspension of proceedings with respect to matters "not related to Bacardi's ex parte communications."

Petitioners have contested the motion through their motion to strike, inter alia arguing that the Sunshine Act does not apply because "the term agency for purposes of the Sunshine Act means an agency that is headed by 'a collegial body composed of two or more individual members, a majority

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<sup>4</sup> Respondents have not cited any authority under which the Board may compel Governor Bush to provide "full disclosure."

of whom are appointed to such position by the President with the advice and consent of the Senate," and neither the USPTO or the Department of Commerce, of which the USPTO is "a part," are "run by a collegial body." They further maintain that "the letter was sent to him [Director Rogan] in his official capacity as director," and that Director Rogan is not an "administrative law judge or other employee who is or may reasonably be expected to be involved in the decisional process," quoting the language of Section 557(d)(1). Also, petitioners argue that even if the Sunshine Act applies, "no violation occurred [because] Mr. Rogan rightly took the June 13 letter as a status inquiry and responded as was appropriate with a recitation of the procedural status of the matter"; and that Governor Bush's July 16 letter constituted "a thank you note for [Director Rogan's] courtesy, acknowledging that the status information was what the inquiry sought."

We first consider whether Section 557(d) even applies to Board proceedings. 5 U.S.C. §557(a) states that "[t]his section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title." 5 U.S.C. §556(a), states that "[t]his section applies according to the provisions thereof, to hearings required by section 553 [involving rulemaking] or 554 [involving adjudications] of this title to be

conducted in accordance with this section." 5 U.S.C.

§554(a), involving adjudications, provides that:

This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved

(1) a matter subject to a subsequent trial of the law and the facts de novo in a court.

Because Board proceedings are appealable to the district courts and subject to a subsequent trial of the law and the facts de novo in a court, see 35 U.S.C. §21(b)(1), Board proceedings may fall within the exception of Section 554(a).

Neither party has submitted arguments regarding the applicability of Section 557(d) to Board proceedings in view of the restrictions of Sections 557(a), 556(a) and 554(a),<sup>5</sup> and we have reservations about the applicability of Section 557(a) to Board inter partes proceedings. See, e.g., *In re Gartside*, 203 F.3d 1305, 53 U.S.P.Q.2d 1769 (Fed. Cir. 2000)(in an appeal from a decision of USPTO's Board of Patent Appeals and Interferences, the Federal Circuit noted that "§ 554 excludes PTO adjudication from the trial-type procedures set forth in 5 U.S.C. §§ 556 and 557" because "section § 554(a)(1) excludes agency adjudication from these

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<sup>5</sup> As noted above, petitioners maintain that Section 557(d) does not apply to the Board, but the basis for their assertion stems from the definition of "agency" in the Government in the Sunshine Act. However, as petitioners correctly note, the definition of "agency" in the Government in the Sunshine Act applies to Section 552(b) regarding open meetings, and not Section 557(d).

requirements when the subject matter of that adjudication is subject to a subsequent trial *de novo*, see 5 U.S.C. § 554(a)(1)(1994), as in the case of Board adjudication ...."); and *In re Zurko*, 258 F.3d 1379, 59 U.S.P.Q.2d 1693 (Fed. Cir. 2001), *rev'd on other grounds*, *Dickinson v. Zurko*, 527 U.S. 150, 50 U.S.P.Q.2d 1930 (1999) ("we have not held the board's patentability decisions to the requirements of 5 U.S.C. §§ 554 (adjudications other than those subject to *de novo* review), 556 (hearings required by §§ 552-54), or 557 (decisions when hearings are required by 556).")<sup>6</sup> However, even if Section 557(d) applies to this case, we find that respondents' motion is without merit and must be denied.

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<sup>6</sup> Respondents have cited *In re Sang-Su Lee*, 277 F.3d 1338 (Fed. Cir. 2002) for the proposition that "[t]ribunals of the PTO are governed by the Administrative Procedure Act"; and *A.S. v. B.R.*, 1998 Pat. App. Lexis 10 (Bd. Pat. App. & Int. 1998) for the proposition that the Patent Board "enforc[ed] the Government in the Sunshine Act within the USPTO." However, these cases so not assuage the Board's reservations about the applicability of Section 557(d) to Board proceedings. First, *In re Sang-Su Lee* refers to the Administrative Procedure Act in the context of discussing the standard of review by the Federal Circuit of an *ex parte* decision by the Board of Patent Appeals and Interferences, and not an *inter partes* decision by the Trademark Trial and Appeal Board. [*In re Sang-Su Lee* followed *Dickenson v. Zurko*, 144 L.Ed.2d 143, 50 U.S.P.Q.2d 1930 (1999), another case involving an *ex parte* USPTO matter, in which the Supreme Court decided the standard of review to be applied by the Federal Circuit to decisions by the Board of Patent Appeals and Interferences.] *A.S. v. B.R.* notes the provisions of Sections 557(d)(1)(A) and (B), as well as the "Code of Professional Responsibility of the Patent and Trademark Office," certain regulations of the Department of Commerce, the Standards of Conduct of the Office Personnel Management, and the Code of Conduct for United States Judges in developing guidance for practitioners in patent interference cases regarding *ex parte* communications. The Board of Patent Appeals and Interferences in *A.S. v. B.R.* did not "enforc[e] the Government in the Sunshine Act within the USPTO," as respondents maintain.

Sections 557(d)(1)(A), (B) and (C) provide as follows:

(A) [N]o interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding.

(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

(i) all such written communications;

(ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph.

Significantly, 557(d)(1)(A), (B) and (C) only cover *ex parte* communications which are "relevant to the merits of the proceeding." As explained below, while Governor Bush and Director Rogan's letters are relevant to the proceeding, they are not relevant to the *merits* of the proceeding.

First, Governor Bush's June 13, 2002 letter asks that the USPTO "take quick, decisive action on a pending application to expunge the registration of the trademark Havana Club," and that the "out-dated registration ... should be cancelled immediately." It also notes that petitioner Bacardi-Martini, USA, Inc. "have [sic] been faced with a process mired in lengthy bureaucratic procedures, with no end in sight"; and declares that a "swift resolution to this matter is imperative." However, petitioners, in their supplemental and amended petition to cancel (filed August 20, 1996), have asserted the following claims; (i) fraud in the filing of the application; (ii) fraud in the filing of the Section 8 affidavit of use; (iii) abandonment based on the legal effect of the assignments of the registration; and (iv) misrepresentation of the source of the goods. The letters in question do not discuss or even refer to these claims.

Second, we cannot agree that Governor Bush's request for "quick, decisive action" or declaration that "a swift resolution to this matter is imperative" transforms the letter into an ex parte communication on the merits. We find support in *Professional Air Traffic Controllers Org. v. FLRA*, 672 F.2d 109 (D.C. Cir. 1982), where the District of Columbia Court of Appeals considered whether two phone calls made by the Secretary of Transportation to two Federal Labor

Relations Authority administrative law judges in connection with an unfair labor practice charge concerning the air traffic controllers' strike of 1981 were ex parte communications on the merits. The Secretary had stated in one phone call that "the Department of Transportation would appreciate expeditious handling of the case." In the other phone call, he expressed "his concern that the case not be delayed." The court, after considering the substance of the communications, commented that the Secretary "did not in fact discuss the merits of the case." *Id.* at 118.

Third, admittedly, Governor Bush's statement that the "out-dated registration ... should be cancelled" is of greater concern because it identifies the desired outcome of the proceeding. However, Governor Bush merely has stated what petitioners state in their supplemental and amended petition to cancel. Additionally, when we consider the letter as a whole, including the Governor of Florida's statements that Bacardi-Martini, USA, Inc.'s "headquarters are located in Miami and has a workforce of more than 300 Floridians," that it has "faced ... a process mired in lengthy bureaucratic procedures, with no end in sight," and the invitation to contact the Governor's office if there are "further questions", we view the letter as a complaint on behalf of a Florida-based business about delays in the cancellation

process with a request for status information, rather than as an *ex parte* communication on the merits.<sup>7</sup>

As for Governor Bush's letter of July 16, we agree with petitioners' characterization of the letter as being "a thank you note" and do not view the letter as an *ex parte* communication on the merits of this proceeding. Turning to Director Rogan's letter, we agree with petitioners that Director Rogan "took the June 13 letter as a status inquiry and responded as was appropriate with a recitation of the procedural status of the matter." Its contents did not relate to the merits of this proceeding.

We therefore disagree with respondents' contention that petitioners' failure to provide respondents with a copy of Governor Bush's letters was a violation of Section 557(d)(1)(A) or that Director Rogan's failure to provide respondents with a copy of Governor Bush's letters or a copy of Director Rogan's letter was a violation of Section 557(d)(1)(C). As for respondents' contentions that there have been "other and further *ex parte* communications," including *ex parte* communications with Deputy Director Dudas, in violation of Sections 557(d)(1)(B) and (C), we remain unpersuaded by the record before us that such communications have occurred.

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<sup>7</sup> Status inquiries are specifically excluded from the prohibitions of Section 557(d) through the definition of "*ex parte* communication." See 5 U.S.C. § 551(14).

Respondents also contend that petitioners have violated Patent and Trademark Office Rule 10.93(b). If there are ethical matters respondents believe need to be addressed, they should follow the proper procedures for reporting such matters to the USPTO's Office of Enrollment and Discipline. See e.g., Patent and Trademark Office Rules 10.24 and 10.23(c). The Director of Enrollment and Discipline, not the Board, is charged with general responsibility for enforcement of the Disciplinary Rules, such as Patent and Trademark Office Rule 10.93(b). See Patent and Trademark Office Rule 10.2(b)(2).

In view of the foregoing, respondents' motion pursuant to the Government in Sunshine Act and for continued suspension is denied and petitioners' motion to strike is moot.

Petitioners' motion for default judgment is also denied. Petitioners have argued that Cubaexport should be defaulted and its registration cancelled, reasoning as follows:

Indeed, to date, Cubaexport, which was represented by Proskauer Rose LLP formally in connection with the original motion seeking an extension of time to respond to petitioners' summary judgment motion has conspicuously not appeared on these latest papers, although no new counsel has been substituted for Proskauer. Cubaexport has also refused to submit to the jurisdiction of the U.S. courts in this matter and has, as the Board can judicially notice, refused to appoint a registered agent for service of process.

However, the record in this case reflects that Cubaexport has only now become a party to this proceeding by this order. Thus, Cubaexport could not have defaulted, so as to warrant default judgment. Also, petitioners' complaint that "Cubaexport has ... refused to submit to the jurisdiction of the U.S. courts" is irrelevant to this proceeding. A domestic representative is identified for this registration and, pursuant to Trademark Rule 2.119(d), service of notices or process for this proceeding may be made on the designated domestic representative. Thus, petitioners' motion for default judgment is also denied.

***Resumption of Proceedings***

Because the District Court proceeding and the Federal Circuit appeal have been concluded, petitioners' motions (filed March 15, 2002 and August 21, 2002) to resume proceedings are granted to the extent that proceedings are now resumed for the limited purpose of considering petitioners' motion for summary judgment. Thus, respondents are allowed until **forty days** from the mailing date of this order to file and serve a response to petitioners' summary judgment motion. If petitioners file and serve a response, respondents are allowed until **fifteen days** (twenty days if service is by first-class mail, "Express Mail," or overnight courier; see Trademark Rule 2.119(c)) from the date of service of the response to file and serve a reply. The

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Board will consider the summary judgment motion in due course.

Proceedings herein otherwise remain suspended. The Board further defers action on respondents' motion for summary judgment, petitioners' motion to extend time and petitioners' motion under Rule 56(f).

To expedite matters, a copy of this order is being sent via facsimile as well as by first class mail.

cc:

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